IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3887 OF 2006

The State of Maharashtra ...Applicant

Vs.

Shivaji Martand Kavade ...Respondent

Shri U.V.Nikam, A.P.P for the Applicant.
None for the Respondent.

CORAM : A. S. OKA, J.
DATE : NOVEMBER 07, 2006.

P.C.:

1. Heard the learned A.P.P for the Applicant. The Respondent-accused No.1 has been acquitted of the offence punishable under section 306 read with section 34 of the Indian Penal Code. According to the case of the prosecution, the deceased Anil was an employee of a Devasthan Trust of which the Respondent, at the relevant time, was chairman. According to the prosecution case on 09th December, 2003, the deceased Anil met the Respondent at Pune. On the next day in the morning, deceased Anil came back to his house and thereafter proceeded to his place of employment. Afterwards he returned to his house and after changing clothes proceeded out of house. Thereafter deceased Anil did not come back. On 12th December, 2003 a close relative of the deceased filed a missing complaint.

Thereafter the dead body of the deceased was found floating in water of Ghodnadi. On 15th December, 2003, the same close relative of the deceased filed a complaint alleging that the Respondent who was employer of the deceased was harassing the deceased by calling the deceased at his residence in the night. According to his case, the Respondent was taking money from the account of the Trust without signing any voucher and was not giving the accounts. A show cause notice was issued by the Respondent in his capacity as an employer to the deceased making allegations against the deceased of misappropriation.

2. According to the prosecution case, the accused No.2 informed the complainant that the deceased was at Vashi. According to the case of the prosecution, after making the said representation to the complainant, the Respondent No.2 left village and was proceeding towards Pune by mini-bus. Later on the said mini-bus was chased by the complainant and others and they handed over the second Respondent to the Police.

3. The learned A.P.P has invited my attention to the evidence on record and the findings recorded by the Trial Court. He submitted that a clear case of offence

under section 306 of the Indian Penal Code was established atleast as against the accused No.1.

4. I have considered the submissions. The learned Trial Judge has noted that missing report was filed by the complainant on 12th December, 2003 in which no suspicion or doubt was raised by him. The complaint alleging offence against the Respondent was filed on 15th December, 2003.

5. So far as the accused No.2 is concerned, the State has not preferred Appeal against acquittal. Therefore, the case against him need not be discussed.

6. So far as the Respondent is concerned, the evidence is of close relatives of the deceased and some of the trustees of the Trust. It is brought on record that the said trustees who deposed as prosecution witnesses had dispute with the Respondent and proceedings were filed between the parties before the Charity Commissioner. Considering the delay in lodging the complaint and considering the fact that the evidence was of close relatives of the deceased, the learned Trial Judge has not accepted their version. The learned Judge, in my view, has rightly discarded

the evidence of other witnesses who were ex-trustees of the Trust and who were having a dispute with the Respondent. The allegation at highest as against the Respondent is that he compelled the deceased to part with money without signing any voucher and that he issued show cause notice to the deceased making allegation against him of misappropriation. If this is the prosecution case, the view taken by the learned Judge that the offence under section 306 is not established is certainly a possible view taken on the basis of evidence on record. The learned Judge has considered that the show cause notice issued by the Respondent to the deceased was in his capacity as an employer of the deceased.

7. Hence, Application for leave is rejected.

JUDGE